Before the Federal Communications Commission
Washington DC 20554
July 9, 2010

In the Matter of   )
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Schools and Libraries Universal Service   ) CC Docket No. 02-6
Support Mechanism   )
)
A National Broadband Plan   )
For our Future

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**Comments of the American Association of School Administrators and
the Association of Educational Service Agencies**

Introduction

On behalf of the *American Association of School Administrators*, representing more than 13,000 public school superintendents and local educational leaders and the *Association of Educational Service Agencies*, representing 553 collaborative education service agencies in 45 states, we would like to applaud the FCC for the leadership role they have taken to oversee the deployment of higher level connectivity across the country. The National Broadband Plan released this spring lays out a bold strategy for extending broadband access to all corners of the country. However, E-Rate continues to be the critical tool for ensuring connectivity of school districts nationwide.

Since its inception, E-Rate has been focused on increasing the connectivity and the quality of the connection of schools and libraries. We can now say that almost all schools nationwide are connected to the internet and students are able to integrate cutting edge technology into their classrooms. In addition, with the dismal economic picture, schools are able to use their E-Rate discounts to help them afford essential services and leverage additional dollars for other areas of their budgets, including instruction.

That being said, there is still a lot of work to be done, even within the current constraints of the program. Though most schools and libraries are now connected to the internet, the quality and speed of that connection does not always meet the demand. We still have school districts that do not have the technological capacity to keep up with the cutting edge of online formative assessments and tracking massive amounts of data through the state longitudinal data systems.

E-Rate is capped at $2.25 billion of the Universal Service Fund. This amount has not changed in well over a decade. Each year, schools and libraries apply for E-Rate discounts totaling over $4 billion, yet many of these applications are not able to be funded.

AASA and AESA strongly urge the FCC to carefully consider any changes that might be made to the E-Rate program to ensure that the program continues to fulfill its original promises on connectivity and works to meet current demand before expanding to new services.

Overall Cap Meeting Current Need

AASA and AESA believe that the time has come for the Commission to increase the program's annual cap to meet the current demands of E-Rate. The E-Rate cap has not been raised from the program's $2.25 billion spending cap since 1997, nor has it been adjusted for inflation. The notice itself notes the inadequacy of the current funding cap, writing that

- 'Demand for funding far exceeds available funding every year.'
- '…This year, approximately $2 billion alone was requested for telecommunications and internet access, leaving very little funding available for the internal connections that are necessary to bring higher bandwidth connectivity from a single location in the school to the classroom.'
- 'In future years…it is likely that requests for telecommunications and internet access services will exceed the cap, with the result that no funding for internal connections will be available for any applicants.' In fact, according to the National Broadband Plan, the purchasing power of the E-Rate program has fallen by more than $675 billion since the program's inception (in inflation-adjusted dollars).

Given that the current E-Rate funding system has produced significant, persistent funding shortfalls for priority two services, AASA and AESA strongly urge the Commission to raise the funding cap in an effort to systemically address the program's weak funding structure.

The NPRM proposes indexing the E-Rate program funding cap to the rate of inflation. While AASA and AESA recognize that indexing the cap as a positive step toward enhancing program funding, we believe the proposal fails to address the more significant problem: the underlying issue of inadequate funding for the program. Incremental addition of dollars linked to inflation will do little to ease the strain on Priority II. AASA and AESA strongly advocate for a raise in the funding cap that would meet current demand on the program.

Streamlining the Application Process

Technology Plans: The NPRM proposes to eliminate E-Rate technology planning requirements for all Priority I applicants otherwise subject to state and local technology planning requirements. The NPRM also asks whether the requirement for technology plans should remain in place for larger, more complex priority I service requests, proposing $1 million as a potential cut-off figure. AASA and AESA support the elimination of technology plans for all Priority I service applications. Eliminating this requirement is a benefit to school districts, reducing the paperwork and administrative effort associated with technology plan preparation and approval. On a related note, AASA and AESA urge the Commission to forgo the arbitrary cut-off figure for applications needing technology plans as it will only create confusion for local applicants.

Competitive Bidding Process

FCC Form 470: The NPRM seeks comment on whether to completely eliminate the Form 470 and related posting process for those applicants seeking Priority I support who are already subject to public procurement requirements. AASA and AESA support the elimination of the Form 470 and posting process. School districts already engage in and are auditable under public procurement processes as required by their state and local governments, and this change eliminates duplicative administrative burden.

Fair and Open Bidding Rule: The NPRM includes a proposal for a comprehensive new rule that codifies that an applicant must use a fair and open bidding process when seeking bids for eligible services. While recognizing the good intentions behind the proposed change, AASA and AESA caution against a potentially serious unintended consequence. This rule would prohibit applicant employees or board members from serving on the board of any telecommunications, Internet access or internal connections provider participating in the E-Rate program in the same state. AASA and AESA believe this rule would disadvantage small cities and towns because fewer people would be eligible to serve on provider company boards. Conversely, the proposed rule would also deny the provider company of years of local expertise and perspective that school and library representatives bring to the table. As such, AASA and AESA urge the Commission to modify its proposal such that applicant board members recuse themselves in potential conflict of interest situations. This would be consistent with recusal laws already in place at the state and local levels.

For example, Ohio has Information Technology Centers (ITCs) that were established to serve Ohio's school districts and charter schools. These ITCs are governed by local boards consisting of the superintendents and treasurers of the constituent school districts. All but one of the Ohio ITCs have become Internet Service Providers with their own SPINs.   The local control of these boards has been a significant force in driving down the cost of internet access for Ohio schools.   The prohibition of applicant employees from serving on ISP boards would completely dismantle the entire educational high speed network in Ohio resulting in significantly higher costs to districts as well as greatly reduced efficiency.

In addition, AASA and AESA would express concern about restricting an applicant's ability to ask questions of a service provider during the bidding process. This could be crucial information that would help inform a school districts decision and should not be restricted.

Application Process Streamlining: The NPRM proposes to improve the online application system and require that all applicants file forms electronically. While generally supporting the use of electronic filing in most instances, AASA and AESA urge the Commission to recognize that e-filing may not be feasible for those applicants (mainly rural and urban) that lack adequate bandwidth for online filing or for replacement contracts that are filed out-of-cycle.

Discount Matrix Streamlining

Discount Calculation: The NPRM proposes that school calculate their discounts by using the average discount rate for the entire school district instead of the weighted average for each school building. AASA and AESA strongly oppose this change, as it would adversely affect low-income schools in large or county-wide school districts by lowering their discount rate percentages. At the same time, wealthy schools in the same districts would benefit from an increase in their discount rates. AASA and AESA encourage the Commission to maintain the current practice of assessing poverty on a school-by-school basis. This will help ensure that E-Rate discounts are targeted to the right school populations without penalizing school districts based on size or whether their state organizes them contiguous to county borders.

Rural Definition: AASA and AESA support the proposed change in the definition of rural area, switching to the locale codes used by the U.S. Department of Education's National Center for Education Statistics (NCES). AASA and AESA strongly urge the Commission to expand the definition to incorporate the urban-centric locale code 41 ('urban fringe'). Failure to include locale code 41 would eliminate E-Rate eligibility to a subset of currently-eligible schools. Including locale code 41 would allow high-cost rural areas near cities to benefit from the higher discount rates they need and deserve and would make the Commission's rule consistent with the proposed definition update for the Rural Education Achievement Program (REAP) within the U.S. Department of Education.

Providing Greater Flexibility to Select Broadband Services

AASA and AESA support the National Broadband Plan's recommendation that the E-Rate program support online learning by providing wireless connectivity to portable devices so students can engage in learning while not at school. AASA and AESA recognize the importance of the NBP's goal of improving the efficiency of the E-Rate program and appreciate the Commission's effort to provide flexibility to select broadband services, but anticipate that many of the Commission's proposals will drain scarce program funds and raise a host of implementation and compliance difficulties. Lack of adequate funding for current existing program demand is a bigger problem that needs to be addressed before looking to expand or prioritize services.

Wireless Services Outside of School:

> Funding: The NPRM proposes to support only Priority I Internet access service. While the proposal wisely excludes equipment support from the proposal, AASA and AESA believe that E-Rate support for this previously ineligible service will eventually represent a major drain on program funding. The NPRM itself cites a survey reporting that more than a quarter (27 percent) of school districts were at one time implementing pilot programs involving Internet-connected wireless devices for use in school and at home. AASA and AESA believe that even more schools would implement these costly programs if the Commission supports out-of-school Internet access service. As a Priority I service, any funding for off-premises internet access service will only further strain the already limited resources available to meet demand for Priority II services. Put succinctly, while AASA and AESA recognize and support the proposal's underlying concept of

anytime/anywhere learning, the Commission should not designate this service for E-Rate support without also appropriately increasing the program's funding cap. In addition, offsite access will increase demand for services as the school might run after-hours approved adult education or afterschool programming that would now have to compete for access with those students accessing the internet from home.

Implementation: The NPRM notes that the Children's Internet Protection Act (CIPA) requirement would still apply to services being used off-premises and that schools would need to certify that services obtained through the E-Rate program are used solely for educational purposes. AASA and AESA are deeply concerned with the major legal and practical ramifications associated with off-school use of Internet connectivity. AASA and AESA believe the enforcement of CIPA and education use requirements are impractical outside of the school campus and represent a significant administrative burden, including the creation and collection of various parental consent forms and the auditing of home usage through home visits and/or technology monitoring. In addition, school districts would have a very hard time verifying not only who is using the computer, but also that the use serves an educational purpose.

Expanding Access to Low Cost Fiber: The NPRM proposes to allow program recipients to receive support for the lease of low-cost dark fiber from non-telecommunications carrier third parties. AASA and AESA have previously called on the Commission to address the outstanding issue of dark fiber.[i] We strongly support that schools and service agencies should have a way to access the dark fiber that is out there and currently not being used. For instance, some schools in Colorado were trying to access some dark fiber that was laid by the Department of Transportation. Unfortunately, though currently unused, a telecommunications company stepped in and required the schools to pay market value for their use, a pay agreement that may be cost prohibitive for the schools. The current regulations defy logic: If the fiber is there, why shouldn't public schools be able to access it? Dark fiber is a strong tool in helping to leverage 'last mile' build-out. AASA and AESA believe the use of dark fiber will enable participants to realize significant cost savings and support the Commission's proposal to classify leased dark fiber from any source as an eligible priority one service.

Targeting Supported Services for Broadband: The NPRM seeks comment on specific proposals to reprioritize E-Rate funding to support higher bandwidth connectively and whether there are certain Priority I or II services that should receive lower priority so that more funds can be made available for higher connectivity broadband applications. AASA and AESA oppose targeting proposals, as they will likely lead to the rationing or elimination of Priority I services, leaving financially struggling schools without the guaranteed funding for critical Priority I services.   Communications connectivity was a basic tenet of the 1996 Telecommunications Act. Additionally, AASA and AESA believe that targeting support services diminishes a school's ability to freely determine the specific connectivity services and priorities it needs to—and can—address. AASA and AESA encourage the Commission to avoid targeting supported services and to allow local schools to choose what they can afford to do.

Expanding the Reach of Broadband to the Classroom

AASA and AESA support the Commission's goal of expanding the reach of broadband into the classroom. AASA and AESA urge the Commission to reconsider adopting proposals that would negatively impact program participants. Currently, funding requests for all eligible services receive Priority One funding.

Any remaining funds are allocated to requests for support of Priority Two services. The Commission itself identifies the unintended consequences of the current funding system: "The net results is the E-Rate program is funding high-capacity pipes to a single point of entry at the school (or library) but not providing any support for the equipment that enable the computer terminals or laptops across the school or library to access that high-capacity pipe."

In light of these unintended consequences, AASA and AESA strongly support the Commission's goals of providing funding for internal connections to more schools and libraries than in the past and ensuring a predictable amount of funding available to schools and libraries for internal connections each year.

Predictable Internal Connections Funding for More Schools and Libraries: The Commission advances the following specific proposals to address the funding shortfall for priority two services, including: (1) per student funding caps/minimum funding amounts; (2) internal connection set-asides; (3) priority two funding thresholds; (4) revised discount matrix; (5) elimination of the 2-in-5 rule; (6) school district-based applications; and (7) elimination of funding for basic maintenance of internal connections. AASA and AESA hold general opposition to these proposals because they fail to address the E-Rate program's principal problem: insufficient funding. AASA and AESA note specific objections to some of these proposals below:

> Capped Amount: The NPRM proposes the establishment of a per-student/per-district cap for each funding year. AASA and AESA oppose per-student based funding because it fails to recognize high-cost service factors that often impact rural and small schools.   Everything from cost of connectivity to accessing maintenance has higher costs in small and geographically isolated locations, and per-pupil funding would unfairly shortchange all of these districts and the students they serve.

> Application by School District: The NPRM proposes to disallow schools from applying for internal connections separate from districts. AASA and AESA believe that individual schools need to maintain their ability to freely determine the specific connectivity services and priorities it needs to—and can—address, separate from the needs of the larger district. As such, AASA and AESA strongly oppose this change, as it would adversely affect low-income schools in large or county-wide school districts by lowering their discount rate percentages. At the same time, wealthy schools in the same districts would benefit from an increase in their discount rates.

> Eliminate Funding for Basic Maintenance of Internal Connections: The NPRM proposes either eliminating eligibility for basic maintenance or capping costs. AASA and AESA oppose both of these changes, as basic maintenance is on ongoing, incurred cost and elimination of the E-Rate discount could significantly increase schools' maintenance costs. In addition, in geographically isolated locations, basic maintenance contracts ensure that they can afford services. If they had to pay per need or event, the costs of paying for travel of the contractor from the nearest city each time would make it cost prohibitive. Maintenance contracts work these travel costs in and allow for a higher rate of affordability.

Summary

As written above, AASA and AESA believe that the time has come for the Commission to increase the program's annual cap to meet the current demands on E-Rate. The E-rate cap has not been raised from the program's $2.25 billion spending cap since 1997, nor has it been adjusted in response to inflation. For the current funding year close to $2 billion ($1.819 billion) of the $2.25 billion restricted fund is currently used up by priority one services. If it wasn't for the roll over funds, it is unlikely that priority two funding would go below the 90 percent discount. This is something that needs to be fixed in the underlying E-Rate program before we consider any expansions. It is expected that if no changes are made in the next couple of years, it is likely that E-Rate will only have enough monies to fund priority one services.

We applaud the sentiments expressed by Chairman Rockefeller, in a letter addressed to Chairman Genachowski, in which he observed that the program's cap had not kept pace with inflationary pressures over the past ten years and requested that the Commission "expeditiously adjust commission rules to address the toll that inflation has taken on this important program." We urge the FCC to seriously consider increasing the cap on this program to bring it in line with the new demands on the fund that could not have been imagined when E-Rate was created. In addition, we cheer the FCC's suggestion to tie additional funding to inflationary increases, and feel that a raising of the cap alongside an annual inflation-based adjustment would go far in supporting E-Rate efforts in meeting demand for technology in the classroom.

[ii] AASA/AESA Ex Parte Filing in the Matter of: Broadband Needs in Education NPB Public Notice #15; GN Docket Nos. 09-47, 09-51, 09-137; CC Docket No. 02-6; WC Docket No. 05-195; February 2010